IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 171 of 1997

in

SPECIAL CIVIL APPLICATION No 1783 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 NO

R P MISTRY, SINCE DECEASED THROUGH HEIRS & LEGAL REPRES.

Versus

REGISTRAR

Appearance:

1. LETTERS PATENT APPEAL No. 171 of 1997

M/S TANNA ASSOCIATES for Appellants No. 1-1/3

MR AJ DESAI AGP for Respondents No. 1-3

MR PARESH UPADHYAY for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE D.H.WAGHELA

Date of decision: 20/12/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. This appeal, under Clause 15 of the Letters Patent, is preferred from the judgment denying the relief of stepping up to the original petitioner, who, having passed away during the pendency of the appeal, is represented by his legal representatives, but hereinafter referred for the sake of convenience as 'the original petitioner' or 'the appellant'.

2. The simple relevant facts may be recounted in brief to appreciate the interesting legal issue involved in the matter. The petitioner was originally appointed as a Section Writer on 19th March, 1962 and thereafter promoted to the post of Section Officer on 20th April, 1980. Two other Sections Writers, namely, Shri R.R.Shah and Shri D.M.Talwari, were appointed on the post of Section Writer on 1st March, 1962 and 16th March, 1962 respectively. All the three were confirmed in the intermediate promotional post of Assistant on 1st March, 1972. Thereafter, as against the date of promotion to the post of Section Officer of the petitioner, i.e. 20th April, 1980, the two other officers, namely, Shri R.R.Shah and Shri D.M.Talwari, were promoted to the post of Section Officer on 20th September, 1982 and 1st May, 1982 respectively. In the year 1980 when the petitioner was selected and promoted to the post of Section Officer, his pay in the cadre of Assistant was Rs.635/- whereas that of Shri R.R.Shah was Rs.675/- and that of Shri D.M.Talwari was Rs.655/- in the common pay scale of Rs.425-15-455-20-615-EB-20-675-25-700-EB-25-800. Upon being promoted to the post of Section Officer in the pay scale of Rs.650/-, the pay of the petitioner was fixed at Rs.680/- giving the benefit of Rule 41-A of the Bombay Civil Service Rules (BCSR). In the year 1982 when Shri Talwari was promoted to the cadre of Section Officer, his salary in the cadre of Assistant was Rs.700/- and on promotion, it was fixed at Rs.740/- again under Rule 41-A of the BCSR. At that time, the petitioner was drawing Rs.740/- per month in the cadre of Section Officer and the salary of Shri R.R.Shah was Rs.725/- per month in the cadre of Assistant. In September 1982, when Shri R.R.Shah was also promoted as Section Officer, his salary had to be fixed at Rs.775/- under the same Rule. As a result, by the subsequent promotion to the two other officers to the post of Section Officer, they came to be

entitled to more pay than the petitioner who was senior to those officers in the cadre of Section Officer.

3. There was no dispute about the legal position that pay of the employees concerned on the promotional post had to be fixed in accordance with Rule 41-A of the BCSR as also about the fact that the post of Section Officer was purely a selection post filled up on selection from the cadre of Assistant. Under the Government Resolution dated 5.1.1965, which was subsequently incorporated into Rule 41-A of the BCSR, one increment in the substantive cadre had to be given and thereafter the pay had to be fixed in the pay scale of the promotional cadre at the next higher stage. When the petitioner was promoted to the post of Section Officer on 1st September, 1980, his basic pay in the cadre of Assistant was Rs.635/-, whereas the basic pay of Shri R.R.Shah and Shri Talwari was Rs.675/- and Rs.655/- respectively. Upon promotion, the pay scale of the petitioner on the post of Section Officer started from Rs.650/- and was fixed at Rs.680/- in compliance of Rule 41-A of the BCSR. Similarly, after two years in 1982, Shri Talwari was promoted and his salary was fixed at Rs.740/- on the basis of his salary of Rs.700/- per month in the cadre of Assistant. At that time, the salary of the petitioner and Shri Talwari became equal. When Shri R.R.Shah was promoted, his salary was fixed at Rs.775/- on the basis of his salary of Rs.725/- which he was drawing in the cadre of Assistant. Thus, Shri R.R.Shah and Shri D.M.Talwari, who were juniors to the petitioner in the cadre of Section Officer, got higher salary despite their promotion being subsequent to that of the petitioner. Stating this as an anomaly, the petitioner approached this Court with the prayers to remove the disparity and direct the respondents to give step-up increments to the petitioner.

4. The learned counsel for the appellant categorically accepted as the basis of the petitioner's claim the provisions of Rule 41A of the BCSR, the relevant part of which reads as under:

> "R.41-A (a) Notwithstanding anything contained in Rule 41, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post involving assumption of duties or responsibilities of greater importance (as interpreted) for purposes of Rule 56, than those attaching to the post held by him in the normal

course of promotion or transfer, he will draw as initial pay the stage of the time-scale of the higher post next above the pay notionally arrived at by increasing his pay in respect of the post held by him by one increment:

Provided that-
(i) .....
(ii) .....
(2) .....

"Instruction: (a) Where on regulating initial pay of a government servant under this rule the government servant on promotion to a higher post may become entitled to get more pay than what his senior colleagues promoted earlier to such posts in the same line of promotion may be receiving on the crucial date (date of promotion of the junior government servant), then the pay of the senior government servant in such higher post shall be increased up to the level of the pay admissible to[the junior government servant with effect from the date of promotion of the junior government servant irrespective of the fact whether the senior government servant has been confirmed in the higher post prior to the date of promotion of the junior government servant, subject to fulfillment of the conditions mentioned below:

(1) Both the junior and the senior government servants shall belong to the same cadre and the posts in which they have been promoted shall be identical and in the same cadre;

(2) The time scale of the pay of the lower posts held by the senior and junior government servants are identical and that the time scale of the posts involving greater responsibilities and duties to which the government servants are appointed are identical.

(3) The senior government servant had not been appointed to the post involving greater responsibilities and duties, earlier than the junior government servant he would have been eligible to draw pay of the lower post at a stage not lower than that admissible to the junior

government servant immediately prior to the appointment of the junior government servant to the higher post.

Provided that.....

(4) The difference in the pay of the senior and the junior government servant has arisen as a result of the application of this rule;

(5) The pay of senior government servant so increased shall not be reduced on reversion of the junior government servant nor shall it be increased again with reference to the pay of the same officer on repromotion."

5. It is apparent that in order to get the benefit of stepping up, the petitioner was required to show that but for his promotion to higher post earlier, he would have been eligible to draw pay in the lower post at a stage not lower than that admissible to the junior persons immediately prior to their promotion to the higher post. In the facts of this case, both Shri Talwari and Shri Shah were senior to the petitioner in the cadre of Assistant. Had the petitioner not been selected and promoted earlier, his pay would have been less than that of Shri Shah in the cadre of Assistant at the time when Shri Shah was promoted. Thus, the necessary condition for application of the rule of stepping-up as contained in Clause (3) of the Instruction reproduced hereinabove is not fulfilled in the case of the petitioner. Moreover, the difference in the pay of the petitioner and the other officers promoted subsequently has not arisen as a result of the application of the rule of stepping-up. As mentioned earlier, the basis of the claim of the petitioner was the Resolutions of the Government which are admittedly incorporated into the above Instruction. And the essential condition for application of the rule of stepping-up having not been fulfilled in the case of the petitioner, he is not entitled to the benefit of step-up increments.

6. In view of the facts and legal position discussed hereinabove, the appellant was not entitled to any of the reliefs as prayed in the original petition and this appeal has to fail. Accordingly, this appeal is dismissed with no order as to costs.

Sd/-

(J.N.Bhatt, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)